



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: May 5, 2009

TO: City Council Ordinance Committee

FROM: City Attorney's Office

SUBJECT: Regulation Of Aggressive Solicitation Or Panhandling

RECOMMENDATION:

That the Ordinance Committee review and comment upon a draft ordinance to amend Chapter 9.50 of Title Nine of the Municipal Code regulating abusive panhandling or solicitations within the City and forward to the City Council any Code amendments deemed appropriate by the Committee, in conjunction with the Council's further consideration of the other related strategies recommended by the Council Subcommittee on Homelessness and Community Relations.

DISCUSSION:

During its public hearings and deliberations in the Fall of 2008, the City Council's "Subcommittee on Homelessness and Community Relations" identified a definite need for the City Council to consider revising the Santa Barbara Municipal Code restrictions on "Aggressive Solicitations" - the City's public "solicitation" regulations as codified in Chapter 9.50 of the Code, an ordinance enacted in 1992.

Recent experience in Santa Barbara, particularly along State Street and in the Waterfront, has shown that the City's existing "aggressive solicitations" ordinance (SBMC Chapter 9.50) is proving to be of limited usefulness in addressing some of the recent solicitation or panhandling behavioral concerns – concerns which appear to be much more common and problematic now than when Chapter 9.50 was enacted in the early 1990s. For the most part, as currently drafted, SBMC Chapter 9.50 only prohibits "solicitations" under circumstances where the solicitor or panhandler is clearly threatening someone with potential assault or possible physical harm. Yet, lately, a more common undesirable occurrence seems to be the use of abusive or offensive language in solicitation situations where the solicitor is also violating what most people would consider their "personal space" and, in so doing, is blocking a person's free use of the sidewalk. In addition, some of our more popular retail and visitor areas of the City seem to be experiencing an increase in efforts to panhandle from individuals who are in a "captive" situation, i.e., soliciting from the persons eating at an outdoor restaurant table, from persons waiting for a bus or to enter a movie theater, or from persons using

an ATM machine. Further, the City also seems to be seeing more instances of panhandlers monopolizing the use of public street furniture for long periods of time and verbally soliciting from virtually every person who walks by.

As a result, the public input to the Council Subcommittee and the Subcommittee's recommendation to the Council was fairly unequivocal – that the City should consider amending Chapter 9.50 in order to enact new and more comprehensive City regulations restricting the sort of conduct which has come to be known as "abusive panhandling," particularly when this conduct occurs within certain visitor and retail areas of the City such as along parts of State Street, lower Milpas Street, or Cabrillo Boulevard. These proposed new regulations would be very similar to the approach taken by the city of Santa Monica in enacting amendments to their Municipal Code in the mid-1990s and in the fall of 2008 as it applies to Santa Monica's Third Street Mall area.

The attached draft ordinance is intended to begin the discussion needed for these potential revisions to the Municipal Code. You will see in this draft that the City Attorney's office is recommending that the City fully and properly recognize that some forms of "soliciting" or "begging" are deemed matter of "speech" protected by the First Amendment. In some forms, this "speech" is absolutely protected and, in others (such as when it is coupled with certain types of conduct), it is protected only within the context of reasonable time, place, and manner restrictions, particularly restrictions regulating only "conduct" but not impacting the content of the "speech."

In light of these constitutional concerns, the attached draft ordinance is clear that the definition of the term "panhandling" does not include a person who only seeks donations non-verbally and without addressing his or her solicitation to any specific person and without impeding the use of the sidewalk. Thus, this ordinance would provide that any person who is begging or soliciting without making direct verbal requests, or who panhandles in certain "non-captive" locations, would not be violating any City laws. For example, soliciting by someone who simply sits on a bench or stands on a street corner holding a sign would not be a violation of this ordinance) This is because such non-verbal or "passive" begging is likely to be considered by the courts to be the exercise of First Amendment rights. This would also be true without regard to where the non-verbal solicitation takes place – that is, without regard to whether the person was within 25 feet of an ATM or a bus stop or sitting on a street bench or in proximity to a sidewalk dining area. In effect, for reasons relating to the need to have a clearly constitutional ordinance directed at preserving a substantial public (governmental) interest, the proposed new "abusive panhandling" ordinance would restrict only improper panhandling "conduct" which is coupled with a direct verbal solicitation by a panhandler – and then only within certain limited contexts and locations.

As you know, on February 23, 2009, the City Council approved all 12 of the Council Subcommittee's recommended strategies – of which this is but one – with the understanding that these strategies would proceed to the needed public review process and, thereafter, acted on and implemented concurrently. As a result, Staff is suggesting that this draft ordinance be reviewed, considered, and revised as deemed appropriate by

the Ordinance Committee and then held for possible introduction when the Council is in a position to also take action on the related Subcommittee strategies.

ATTACHMENT: Draft Ordinance

SUBMITTED BY: Stephen P. Wiley, City Attorney

APPROVED BY: City Administrator's Office

*Ordinance Committee DRAFT
May 5, 2009
All New Language*

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SANTA BARBARA AMENDING TITLE NINE OF THE
SANTA BARBARA MUNICIPAL CODE TO ENACT A
REVISED ORDINANCE PROHIBITING ABUSIVE PUBLIC
SOLICITATIONS BY AMENDING AND REVISING SANTA
BARBARA MUNICIPAL CODE CHAPTER 9.50.

The Council of the City of Santa Barbara does ordain as follows:

SECTION ONE: Chapter 9.50 of Title Nine of the Santa Barbara
Municipal Code is hereby amended in its entirety to read as
follows:

9.50.010 Purpose.

The City Council finds that there is a need to impose reasonable
and specific time, place, and manner limitations on certain
forms of conduct which often accompanies panhandling (as defined
herein) in order to protect the safety and the right of the
general public to be free from exposure to these forms of
inappropriate public conduct and physical contact but, at the
same time, to properly and fully protect the Free Speech rights
of all concerned.

The Council also finds that this need is especially true of
certain areas of the City, such as Cabrillo Boulevard, lower
Milpas Street, and certain blocks of State Street (those within
the City Central Business District) which are popular and often
crowded visitor and retail-serving areas which provide only
limited public amenities such as public seating and outdoor
dining areas. The Council further finds that, because these
streets of Santa Barbara often have thousands of visitors each
day and because there is limited public seating available within
these areas, it is necessary and appropriate to provide
regulations which prevent some persons from monopolizing the use
of a public bench or a public seating area for several hours at
a time while panhandling and for the City to adopt regulations
which provide for the shared and reasonable usage of the
available public seating by all members of the public,

especially the elderly and persons with special access restrictions.

Finally, the Council finds that such regulations will not prevent panhandlers from using public benches and public seating within these areas for temporary respite nor will these regulations impact the content of any statements made by a panhandler or otherwise improperly restrict First Amendment rights.

9.50.020 Definitions.

The following words or phrases as used in this Chapter shall have the following meanings:

A. Panhandling. Any request made in person seeking an immediate donation of money or other item of value. A person will not be deemed to be in the act of panhandling when he or she passively displays a sign or provides any other indication that he or she is seeking donations without addressing his or her solicitation to any specific person, other than in response to an inquiry by that person.

B. Donation. A gift of money or other item of value and including the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.

C. Abusive Panhandling. To do one or more of the following while engaging in panhandling or immediately thereafter:

1. Blocking or impeding the passage or the free movement of the person solicited;
2. Following the person panhandled by proceeding behind, ahead or alongside of him or her after the person panhandled declines to make a donation;
3. Threatening, either by word or gesture, the person panhandled with physical harm or an assault;
4. Abusing the person panhandled with words which are offensive and inherently likely to provoke an immediate violent reaction;
5. Touching the person being panhandled without that person's consent; or

6. Engaging in panhandling in any of the prohibited places or under any of circumstances specified in section 9.50.030.

9.50.030 Abusive Panhandling Prohibited; Specific Locations of Where Panhandling is Prohibited.

A. Abusive Panhandling is unlawful and prohibited entirely within the city of Santa Barbara.

B. Panhandling is prohibited when the person being panhandled is in any of the following locations:

1. At a bus stop;
2. In a vehicle on a public street, alleyway, or City parking lot or parking structure;
3. Within a City parking lots or parking structure;
4. Within an outdoor dining area of a restaurant or other dining establishment serving food for immediate consumption;
5. Within twenty five feet of an automated bank teller machine; or
6. In a queue of five or more persons waiting to gain admission to a place of business or a vehicle, or waiting to purchase an item or admission ticket.

9.50.035 Use of Public Benches for Panhandling.

Panhandling is prohibited while seated on or otherwise using a public bench or chair (including any landscape planter or other public street furniture which can be sat upon) within the following areas:

1. on either side of State Street from the 400 block to the 1200 block; or
2. either side of Milpas Street from the 00 South block to the 200 block North; or
3. Cabrillo Boulevard between Castillo Street and Milpas Street.

9.50.040 Penalty for Abusive Solicitation.

Any person who engages in abusive solicitation as defined herein shall be guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed one thousand dollars (\$1000) or be imprisoned for a period not to exceed six months, or both.